UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,283	01/16/2001	Chao-Hsin Chang	67,200-355	5574

7590 10/06/2005

TUNG & ASSOCIATES
Suite 120
838 W. Long Lake Road
Bloomfield Hills, MI 48302

EXAMINER	
DASS, HARISH T	

ART UNIT	PAPER NUMBER
3628	

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/761,283	CHANG, CHAO-HSIN	
	Examiner	Art Unit	
	Harish T. Dass	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 May 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5, 9-13 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Chou et al (hereinafter Chou – US 6,240,400) in view of Johnson et al (hereinafter Johnson – US 6,047,274).

Re. Claims 1 and 9, Chou discloses a method for accommodating electronic commerce in a semiconductor manufacturing capacity market where product manufacturers and users of chips to trade semiconductor manufacturing capacity [see entire document, particularly Abstract; Figure 3; C1 L1-L64],

providing a fabrication facility having available production capacity for producing at least product (solicit capacity in semiconductor manufacturing capacity market; DRAM) [C1 L10-L64; C2 L60-L67], and

allocating from the producing the least one product a first capacity for producing least one specified product (DRAM, SRAM) [C2 L60 to C3 L26].

Chou does not explicitly disclose auctioning, while employing a computer based auction method, the least one specified product pool of bidders comprising least one bidder, determining from the pool bidders comprising at least one bidder at least one winning

bidder, and fabricating, at least one winning bidder, quantity least one specified product from the manufacturing facility while employing the first capacity for producing the at least specified product.

However, Johnson et al (hereinafter Johnson – US 6,047,274) discloses auctioning, while employing auction method, the least one specified product pool of bidders comprising least one bidder [Abstract; Figures 4, 6-7, 11-16; C5 L55 to C7 L52; C9 L15-L25], determining from the pool bidders comprising at least one bidder at least one winning bidder [C10 L14-L50], and at least one winning bidder, quantity least one specified product from the manufacturing facility while employing the first capacity for producing the at least specified product [Abstract; C1 L7-L25; C5 L55 to C7 L52; C3 L30-L37; C5 L27-L34] to provide auction services for buyer and seller who wish to sell/buy extra capacity in competitive bid. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Chou and Johnson and include auction service for sell extra manufacturing capacity that manufacturer can not use which can be put for auction for competitive bid to be utilized by end user as an economical choice.

Re. Claims 2-3 and 10-11, Chou wherein least one product selected from the group consisting mechanical products, electrical products, chemical products electro-mechanical products and wherein the least one product microelectronic product selected from group consisting integrated ceramic substrate microelectronic

fabrications, optoelectronic microelectronic fabrications, sensor image optoelectronic microelectronic fabrications (semiconductors) [C1 L10 to C3 L26].

Re. Claims 4-5 and 12-13, Neither Chou nor Johnson explicitly discloses wherein the first capacity for producing the at least specified product is equal to the total available capacity producing the at least one product and wherein the first capacity producing less than the total available capacity producing at least product. Leasing or selling manufacturing capacity is management business choice and it is based on the company strategy, long term, or short term goals and market situations they compete (for example, IBM strategy to lease or sale excess semiconductor capacity at East Fishkill, NY, or Capital Locomotive of Greenville, SC, does not have orders to assemble locomotive and the assembly line is ideal and costs Capital Locomotive every month. The management decides to contract ABB Traction, who does not have manufacturing facility of its own in USA, to use the facility and pay for it as a lease to manufacture its locomotives or Capital Locomotive decide to lease partial capacity such as body repair shop for period of time.) It would have been obvious to one of ordinary skill in the art at the time the Applicant's invention was made to modify disclosures of Chou and Johnson and include leasing or selling manufacturing capacity in full or partial to generate revenue when business demands to recover investment and labor cost at minimum.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chou et al (Chou) in view of Johnson et al (Johnson).

Re. Claim 17, claim 17 substantially similar to claim 1, therefore it is rejected with same rational as claim 1. It should be noted that microelectronics are semiconductor devices similar to transistor, integrated circuit, diode, etc.

Claims 6-8 and 14-16 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Chou and Johnson, as applied to claims 1, 9 above, and further in view of Ausubel (US 5,905,975).

Re. Claims 6-8 and 14-16, neither Chou nor Johnson explicitly discloses wherein auction is group consisting of English auctions, auctions, reserve auctions, non-reserve auctions, sealed bid auctions and Vickrey auctions. However, Ausubel discloses these type of auctions (English auctions, auctions, reserve auctions, non-reserve auctions, sealed bid auctions and Vickrey auctions) [see entire document particularly, Abstract; Figure 1; C1 L15 to C5 L40; C14 L20 to C15 L33] for providing a computerized auction system to allow players (bidders/offers) interactively participate in auction and use the flexibility of different auction systems for best pricing. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Chou, Johnson, Ausubel to allow bidders to submit not only their current bids, but also to enter future bids into auction system.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chou and Johnson, as applied to claim 17 above, and further in view of Ausubel.

Re. Claim 18, claim 18 similar to claim 6, therefore it is rejected with same rational as claim 6.

Re. Claim 19, claim 19 similar to claim 7, therefore it is rejected with same rational as claim 7.

Re. Claim 20, claim 20 similar to claim 8, therefore it is rejected with same rational as claim 8.

Response to Arguments

1. Applicant's arguments filed 5/20/2005 have been fully considered but they are not persuasive. Because:

In response to applicant's argument that Chou et al discloses a method for setting up an open market for negotiating the purchase and sale of excess capacity ...

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must **either** be **in the field of applicant's endeavor or, if not,** then be **reasonably pertinent to the particular problem** with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, **because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem.**"); * Wang Laboratories Inc. v. Toshiba Corp., 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993)>; and State Contracting & Eng 'g Corp. v. Condotte America, Inc., 346 F.3d 1057, 1069, 68 USPQ2d 1481, 1490 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be

considered analogous art **if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved**).

Chou et al discloses electronic commerce in a semiconductor manufacturing capacity market and the capacity is bought and sold between the players using electronic channels such as Internet. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Chou and include an auction system over the Internet (electronic commerce) to sell the same product (services) such as: manufacturing capacity to establish a price in comparative bidding a better format of selling than negotiating individually. Electronic auction systems are well known and Johnson discloses such a system where excess capacity of production is auctioned through electronic auctioneer system (Moderator).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, competitive bidding to establish a better rate for excess production capacity [see Johnson col. 6 lines 10-36].

2. In response to applicant's argument that Johnson et al (page 11 of remarks) is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, auctioning excess production capacity.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harish T. Dass whose telephone number is 571-272-6793. The examiner can normally be reached on 8:00 AM to 4:50 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 571-272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Harish T Dass
Examiner
Art Unit 3628

9/21/05

FRANTZY POINVIL
PRIMARY EXAMINER
AU 3628